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U.S. Department of Justice

Tax Division

Please reply to: Civil Trial Section, Northern Region
P.O. Box 55
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March 26, 2021

Via ECF

Hon. Peggy Kuo
United States Magistrate Judge
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *United States v. Lax, et al.*
18-cv-4061 (E.D.N.Y.)

Dear Judge Kuo:

Pursuant to the Court's March 18, 2021 Minute Order, the United States submits proposed statements of certified facts for the two motions for contempt and sanctions against third-party Martin Ehrenfeld (ECF No. 175 and 216). The facts below are divided between each motion: one set of facts relate to Mr. Ehrenfeld's failure to comply with a document subpoena, and another set of facts relate to Mr. Ehrenfeld's failure to comply with a deposition subpoena. Most of the facts below are supported by documents that were originally filed on the docket with the two motions and will be incorporated here by reference when appropriate. The United States respectfully requests that the Court certify the below statements pursuant to the Federal Magistrates Act.

Proposed Statement of Certified Facts Related to Martin Ehrenfeld's Failure to Comply with a Document Subpoena (ECF No. 175)

1. Martin Ehrenfeld was personally served with a subpoena to produce documents on November 14, 2019. ECF No. 153-1, 3.
2. Mr. Ehrenfeld failed to comply with the subpoena by the return date.
3. The United States filed a letter motion to compel Mr. Ehrenfeld's compliance with the document subpoena. ECF No. 153.
4. A telephonic hearing was held on the motion to compel on May 13, 2020. Mr. Ehrenfeld appeared by telephone. Mr. Ehrenfeld claimed that *Kovell* agreements prevented him

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from complying with the document subpoena. The Court directed Mr. Ehrenfeld to produce by May 27, 2020, the *Kovell* agreements or information about why such information is inaccessible. Mr. Ehrenfeld was also ordered, if asserting privilege, to produce a privilege log by June 30, 2020.

5. Mr. Ehrenfeld failed to produce by May 27, 2020, *Kovell* agreements or information about why such information is inaccessible. Mr. Ehrenfeld failed to produce a privilege log by June 30, 2020.
6. The United States made an oral request for an order to show cause at a July 28, 2020 status hearing. The request was granted and the Court ordered Mr. Ehrenfeld to show cause why he should not be held in contempt for violating the Court's May 13, 2020 order. A hearing on the matter was set for August 4, 2020.
7. The United States notified Mr. Ehrenfeld of the August 4, 2020 hearing by serving him with a copy of the Court's July 28, 2020 order by email and first-class U.S. Mail to his last known address on July 30, 2020. ECF No. 164.
8. Mr. Ehrenfeld did not appear at the August 2, 2020 show cause hearing.
9. On August 7, 2020, the Court ordered Mr. Ehrenfeld to comply with the subpoena and produce all the documents demanded by August 20, 2020. The United States served Mr. Ehrenfeld with a copy of that order by email. ECF No. 166.
10. The United States has communicated with Mr. Ehrenfeld using the phone number and email address that the United States has in its possession.
11. To date, Mr. Ehrenfeld has produced no documents pursuant to the document subpoena.

Proposed Statement of Certified Facts Related to Martin Ehrenfeld's Failure to Comply with a Deposition Subpoena (ECF No. 216)

1. On December 1, 2020, the Court allowed alternative service of a deposition subpoena on Martin Ehrenfeld. The Court ordered the deposition subpoena to be served by email and text message, as well as by mail to his last known address.
2. Mr. Ehrenfeld was served with a deposition subpoena by email on December 18 and 29, 2020 (ECF No. 205-1); by text message on December 22, 2020 (ECF No. 205-2); and by mail to his last known address on December 23, 2020 (ECF No. 205-3). The deposition was scheduled for January 5, 2021.
3. Mr. Ehrenfeld failed to appear for his January 5, 2021 deposition.
4. On January 15, 2021, the Court ordered Mr. Ehrenfeld to appear and give testimony at a February 4, 2021 remote deposition. ECF No. 208. That order was served on Mr. Ehrenfeld by email and text message on January 15, 2021 (ECF No. 209).
5. Mr. Ehrenfeld failed to appear for his February 4, 2021 deposition.

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6. The United States has communicated with Mr. Ehrenfeld using the phone number and email address that the United States has in its possession.
7. To date, Mr. Ehrenfeld has not communicated with the United States regarding his deposition.

Respectfully submitted,

/s/ Ali Gadelhak
Ali Gadelhak
Trial Attorney

Cc: All parties (via ECF) and defendant Moshe Lax (via email)
Martin Ehrenfeld via email and text message